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11 Attorneys for Defendant
GOOGLE INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 ORACLE AMERICA, INC.,

16 Plaintiffs,

17 v.

18 GOOGLE INC.,

19 Defendant.
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Case No. 3:10-cv-03561 WHA

**DEFENDANT GOOGLE INC.'S
RESPONSE TO ECF NO. 2036
REGARDING FORM OF JUDGMENT**

Dept.: Courtroom 8, 19th Fl.
Judge: Hon. William Alsup

1 Defendant Google Inc. (“Google”) respectfully submits this response to the portion of the
 2 Court’s August 18 Order, ECF No. 2036, in which the Court sought the parties’ views on the
 3 form of the Final Judgment entered herein on June 8, 2016 (ECF No. 1989).

4 In the third paragraph of its August 18 Order, the Court ordered the parties to “meet and
 5 confer and advise the Court whether the form of judgment should be amended to reflect that it is
 6 not a final judgment but a Rule 52(c) judgment on partial findings, given that Oracle is entitled to
 7 challenge further uses of Android herein.” ECF No. 2036 at 1-2.

8 The parties conferred on August 24, 2016 regarding these issues. Based on that
 9 conference, Google understands that the parties are in agreement that:

- 10 • amendment of the Final Judgment to a Rule 52(c) judgment would not be
- 11 appropriate; and
- 12 • the form of the Final Judgment should not be amended.

13 More specifically, the parties agreed that a Rule 52(c) judgment is only appropriate
 14 following a non-jury trial of an issue as to which the Court makes findings of fact and conclusions
 15 of law based on the trial. FED.R.CIV.P. 52(c). Such a judgment would therefore not be proper in
 16 this case, given that the recent trial was a jury trial.

17 Google believes that the form of the Final Judgment should not be amended because the
 18 Court’s prior orders, ECF No. 1479 and ECF No. 1781, effectively dismissed without prejudice
 19 and/or struck Oracle’s allegations and claims based on uses of Android or portions of Android in
 20 non-smartphone and non-tablet implementations.

21 In ECF No. 1479, the Court’s February 5, 2016 Order Re Google’s Motion To Strike, the
 22 Court held:

23 As to all other versions and implementations of Android since the last
 24 operative complaint preceding the last trial, Oracle will retain the right to sue
 25 Google for infringement in a separate trial or proceeding. Among possibly others,
 our trial will not include implementations of Android in Android TV, Android
 Auto, Android Wear, or Brillo.

26 ECF No. 1479 at 2.

27 The Court re-affirmed this statement in its May 2, 2016 Memorandum Opinion Re
 28 Google’s Motion *in Limine* No. 2 Regarding New Products, ECF No. 1781. After first stating

that “The issue in the first phase of this limited retrial is whether Google’s use of 37 API packages from Java 2 SE 1.4 and 5.0 in its implementations of Android in phones and tablets constituted a fair use,” ECF No. 1781 at 3, the Court ruled that:

Oracle will be free to sue on these new products in the future, but for now we already have a long list of infringing products to impose on our jury and a line must be drawn somewhere to cabin the universe under consideration.

ECF No. 1781 at 5.

Based on the above orders, Google believes that the Final Judgment as entered on June 8, 2016 is proper. All claims in the case, i.e., Oracle's claims of infringement based on the use in smartphones and tablets of the versions at issue of the Android operating system, have been adjudicated and resolved, with Oracle retaining the ability to assert in the future claims relating to use of Android or portions of Android in implementations other than smartphones and tablets.

KEKER & VAN NEST LLP

Dated: August 25, 2016

By: /s/ Robert A. Van Nest
ROBERT A. VAN NEST

Attorneys for Defendant
GOOGLE INC.